

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

BURTON W. WIAND, as Receiver for
OASIS INTERNATIONAL GROUP, LTD.,
OASIS MANAGEMENT LLC, and
SATELLITE HOLDINGS COMPANY,

Plaintiff,

v.

Case No. 8:20-cv-863-T-60SPF

RAYMOND P. MONTIE, III,

Defendant.

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**ORDER DENYING “DEFENDANT, RAYMOND P MONTIE, III’S
MOTION TO DISMISS THE AMENDED COMPLAINT”**

This matter is before the Court on “Defendant, Raymond P Montie, III’s Motion to Dismiss the Amended Complaint and Memorandum of Law,” filed by counsel on July 27, 2020. (Doc. 24). On August 17, 2020, Plaintiff Burton W. Wiand filed a response in opposition to the motion. (Doc. 27).

After reviewing the motion, response, court file, and the record, the Court finds that the Receiver has satisfied his pleading burden as to each of his claims. *See, e.g., Wiand v. EFG Bank*, No. 8:10-cv-241-T-17MAP, 2012 WL 750447, at *6 (M.D. Fla. Feb. 8, 2012), *report and recommendation adopted*, 2012 WL 760305 (M.D. Fla. Mar. 7, 2012) (finding Rule 9(b) heightened pleading standard inapplicable to fraudulent transfer claim); *In re Burton Wiand Receivership Cases Pending in the Tampa Div. of the Middle Dist. of Fla.*, Nos. 8:05-cv-1856-T-27MSS et al., 2008 WL 818504, at *6 (M.D. Fla. Mar. 26, 2008) (applying Rule 8 pleading

standard to unjust enrichment claims); *Mehlenbacher ex rel. Asconi Corp. v. Jitaru*, No. 6:04-cv-1118-Orl-22KRS, 2005 WL 4585859, at *4 (M.D. Fla. June 6, 2005) (explaining that Rule 9(b)'s particularly requirement does not apply to a breach of fiduciary claim).

The Court notes that “a motion to dismiss should concern only the complaint’s legal sufficiency, and is not a procedure for resolving factual questions or addressing the merits of the case.” *Am. Int’l Specialty Lines Ins. Co. v. Mosaic Fertilizer, LLC*, 8:09-cv-1264-T-26TGW, 2009 WL 10671157, at *2 (M.D. Fla. Oct. 9, 2009) (Lazzara, J.). Defendant’s motion to dismiss is denied. Defendant is directed to file an answer on or before November 16, 2020.

DONE and **ORDERED** in Chambers, in Tampa, Florida, this 2nd day of November, 2020.



TOM BARBER
UNITED STATES DISTRICT JUDGE